

OPEN MEETING



0000111507

ORIGINAL

MEMORANDUM

RECEIVED

Arizona Corporation Commission

DOCKETED

2010 MAY 12 A 9:08

TO: THE COMMISSION

MAY 12 2010

FROM: Utilities Division

AZ CORP COMMISSION
DOCKET CONTROL

DATE: May 11, 2010



RE: IN THE MATTER OF THE APPLICATION OF AGL NETWORKS, LLC FOR
AUTHORITY TO ENCUMBER ASSETS (DOCKET NO. T-20667A-10-0126)

Introduction

On April 5, 2010, AGL Networks, LLC ("AGLN" or "Applicant"), filed an application with the Arizona Corporation Commission ("Commission") requesting authority to encumber its property through the grant of a security interest in the Applicant's assets in support of a proposed financing arrangement pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 and any regulations deemed applicable. The request and participation of AGLN in the proposed financing arrangements are contingent on AGLN and its parent, AGL Investments, LLC ("Parent"), completing a transaction with Zayo Group, LLC ("Zayo Group" and together with AGLN, the "Parties") whereby Zayo Group will acquire all of Parent's membership interests in AGLN.

Background

AGL Networks, LLC

AGLN is a Delaware limited liability company with principal business offices located at Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309. AGLN maintains fiber networks in several metropolitan areas, including Atlanta, Georgia, Charlotte, North Carolina; Kansas City, Missouri; Phoenix, Arizona; and in Richmond and Henrico County, Virginia. AGLN currently provides dark fiber transport services to wireline and wireless carriers as well as enterprise companies, government, health care and educational institutions. AGLN does not currently provide any provisioned telecommunications services. In Arizona, AGLN is authorized to provide competitive private line telecommunications services pursuant to Decision No. 71485 issued by the Commission in Docket No. T-20667A-09-0179 on February 23, 2010.

Zayo Group, LLC

Zayo Group is a Delaware limited liability company with its principal office located at 901 Front Street, Suite 200, Louisville, CO 80027. Through three business units - Zayo Bandwidth, Zayo Enterprise Services and zColo - Zayo Group provides bandwidth, voice, collocation and interconnection, and managed services to carrier, small business, medium business, large business and government customers. Zayo Group anticipates that, upon

completion of the AGLN-Zayo Transaction, AGLN will represent a fourth business unit, which will primarily provide connectivity and dark-fiber related services. Zayo Group proposes to change AGLN's name to Zayo Fiber Solutions, LLC immediately upon completion of the transaction. Although Zayo Group does not have any subsidiaries or affiliates that currently hold a certificate of convenience and necessity ("CC&N") to provide telecommunications services in Arizona, Zayo Bandwidth, LLC ("ZB"), a subsidiary of Zayo Group, has an application pending for a facilities-based long distance and facilities-based local exchange telecommunications services CC&N, Docket No. T- 20694A-09-0379.

The Applicant's Transaction

Zayo Group and its subsidiaries recently completed new company-wide financing arrangements in an aggregate amount of up to \$325 million consisting of (1) \$250 million in senior secured notes and (2) up to \$75 million in revolving credit facilities. Zayo Group and all of its current subsidiaries are borrowers and/or guarantors under the financing arrangements and have pledged substantially all of their assets for the financing arrangement. These financing arrangements require any future subsidiary of Zayo Group, such as AGLN, to become a guarantor and pledge their assets in support of the financing arrangements. As a result, immediately upon completion of the AGLN-Zayo Transaction, AGLN must encumber its property as security for the financing arrangements. The Applicant's pledge of assets will include assets located in Arizona that Applicant is not currently using to provide telecommunications services but that could be used to provide telecommunications services in the future. AGLN states in its application that any customer deposits or prepayments of future telecommunications customers will be excluded from the encumbrance or secured by a bond that is not included in the pledged collateral.

Zayo Group used a portion of the proceeds from the notes to pay off existing term loans and revolving credit facilities, which totaled approximately \$180 million. The remainder of the proceeds from the notes and the proceeds from the new revolving credit facility will be used to fund strategic acquisitions and for other permitted purposes, including working capital, capital expenditures, and other general corporate purposes of Zayo Group and its current and future operating subsidiaries. Zayo Group intends to fund the AGLN-Zayo Transaction with the proceeds of the above referenced notes and cash on hand.

The Parties intend to complete the AGLN-Zayo Transaction within the next ninety (90) days¹. In order to ensure that the Applicant has the necessary approvals to encumber its property through the pledge of its assets upon completion of the AGLN-Zayo Transaction, and to meet its timeline, AGLN requests expedited review and approval by the Commission no later than the Commission's Open Meeting scheduled for June 22-23, 2010.

¹ Approximately July 1, 2010.

Staff's Analysis

AGLN is not yet providing service in Arizona. Accordingly, AGLN does not qualify as a Class A company per Arizona Affiliated Interest Rules, Arizona Administrative Code ("A.A.C.") R12-2-801 to R12-2-806 requiring utilities with greater than \$1 million in jurisdictional revenues to obtain prior approval for a transfer of control transaction.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service.

A pledge of the Applicants' Arizona's assets should not impair the availability of service to customers since the Applicants provide competitive services that are available from alternative service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits, therefore, any authorization for encumbrance should provide customer protection for prepayments and deposits.

On May 10, 2010, AGLN provided Staff with an advance copy of its public notice of financing application. The Company intends to publish a notice of its financing application in the Arizona Republic on May 14, 2010.

The Applicants were found to be in good standing and in compliance by the Consumer Service and Compliance Sections of the Commission.

Staff's Recommendations

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Company, would not impair its ability to attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and adequate service. Staff, therefore, recommends that the Commission authorize AGLN's request to encumber its Arizona assets as described in its application.

Staff concludes that a pledge of the Applicants' assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from alternative service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits, therefore, Staff recommends approval of the application subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by the Applicants.

Staff further recommends that AGLN notify the Commission through a filing in Docket Control within 30 days of the completion of the AGLN-Zayo Transaction.

THE COMMISSION

May 11, 2010

Page 4

Staff further recommends that AGLN file with Docket Control, as a compliance item in this matter, copies of the loan documents, to the Commission Utilities Staff, within 60 days of the execution of any financing transaction authorized herein.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a cursive-like shape.

Steven M. Olea
Director
Utilities Division

SMO:AFF:lhv\AV

ORIGINATOR: Armando F. Fimbres

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES
Chairman
GARY PIERCE
Commissioner
PAUL NEWMAN
Commissioner
SANDRA D. KENNEDY
Commissioner
BOB STUMP
Commissioner

IN THE MATTER OF THE APPLICATION)
OF AGL NETWORKS, LLC FOR)
AUTHORITY TO ENCUMBER ASSETS)
)
)
)

DOCKET NO. T-20667A-10-0126
DECISION NO. _____
ORDER

Open Meeting
May 26 and 27, 2010
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On April 5, 2010, AGL Networks, LLC ("AGLN" or "Applicant"), filed an application with the Arizona Corporation Commission ("Commission") requesting authority to encumber its property through the grant of a security interest in the Applicant's assets in support of a proposed financing arrangement pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 and any regulations deemed applicable. The request and participation of AGLN in the proposed financing arrangements are contingent on AGLN and its parent, AGL Investments, LLC ("Parent"), completing a transaction with Zayo Group, LLC ("Zayo Group" and together with AGLN, the "Parties") whereby Zayo Group will acquire all of Parent's membership interests in AGLN.

Background of Applicants

2. The Company in its Application represents that:

...

- 1 a. AGLN is a Delaware limited liability company with principal business offices located
2 at Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309. AGLN maintains fiber
3 networks in several metropolitan areas, including Atlanta, Georgia; Charlotte, North
4 Carolina; Kansas City, Missouri; Phoenix, Arizona; and in Richmond and Henrico
5 County, Virginia. AGLN currently provides dark fiber transport services to wireline
6 and wireless carriers as well as enterprise companies, government, health care and
7 educational institutions. AGLN does not currently provide any provisioned
8 telecommunications services. In Arizona, AGLN is authorized to provide competitive
9 private line telecommunications services pursuant to Decision No. 71485 issued by
10 the Commission in Docket No. T-20667A-09-0179 on February 23, 2010.
- 11 b. Zayo Group is a Delaware limited liability company with its principal office located at
12 901 Front Street, Suite 200, Louisville, CO 80027. Through three business units - Zayo
13 Bandwidth, Zayo Enterprise Services and zColo - Zayo Group provides bandwidth,
14 voice, collocation and interconnection, and managed services to carrier, small business,
15 medium business, large business and government customers. Zayo Group anticipates
16 that, upon completion of the AGLN-Zayo Transaction, AGLN will represent a fourth
17 business unit, which primarily provides connectivity and dark-fiber related services.
18 Zayo Group proposes to change AGLN's name to Zayo Fiber Solutions, LLC
19 immediately upon completion of the transaction. Although Zayo Group does not have
20 any subsidiaries or affiliates that currently hold a certificate of convenience and
21 necessity ("CC&N") to provide telecommunications services in Arizona, Zayo
22 Bandwidth, LLC ("ZB"), a subsidiary of Zayo Group, has an application pending for a
23 facilities-based long distance and facilities-based local exchange telecommunications
24 services CC&N, Docket No. T- 20694A-09-0379.

25 The Applicant's Transaction

26 3. The Applicants represent that:

- 27 a. Zayo Group and its subsidiaries recently completed new company-wide financing
28 arrangements in an aggregate amount of up to \$325 million consisting of (1) \$250
million in senior secured notes and (2) up to \$75 million in revolving credit facilities.
Zayo Group and all of its current subsidiaries are borrowers and/or guarantors under the
financing arrangements and have pledged substantially all of their assets for the
financing arrangement. These financing arrangements require any future subsidiary of
Zayo Group, such as AGLN, to become a guarantor and pledge their assets in support
of the financing arrangements. As a result, immediately upon completion of the
AGLN-Zayo Transaction, AGLN must encumber its property as security for the
financing arrangements. Applicant's pledge of assets will include assets located in
Arizona that Applicant is not currently using to provide telecommunications services
but that could be used to provide telecommunications services in the future. AGLN
states in its application that any customer deposits or prepayments of future
telecommunications customers will be excluded from the encumbrance or secured by a
bond that is not included in the pledged collateral.
- b. Zayo Group used a portion of the proceeds from the notes to pay off existing term loans
and revolving credit facilities, which totaled approximately \$180 million. The
remainder of the proceeds from the notes and the proceeds from the new revolving

1 credit facility will be used to fund strategic acquisitions and for other permitted
2 purposes, including working capital, capital expenditures, and other general corporate
3 purposes of Zayo Group and its current and future operating subsidiaries. Zayo Group
4 intends to fund the AGLN-Zayo Transaction with the proceeds of the above referenced
5 notes and cash on hand.

- 6 c. The Parties intend to complete the AGLN-Zayo Transaction within the next ninety (90)
7 days¹. In order to ensure that Applicant has the necessary approvals to encumber its
8 property through the pledge of its assets upon completion of the AGLN-Zayo
9 Transaction, and to meet its timeline, AGLN requests expedited review and approval
10 by the Commission no later than the Commission's Open Meeting scheduled for June
11 22-23, 2010.

12 Staff's Analysis & Recommendations

13 4. AGLN is not yet providing service in Arizona. Accordingly, AGLN does not
14 qualify as a Class A company per Arizona Affiliated Interest Rules, Arizona Administrative Code
15 ("A.A.C.") R12-2-801 to R12-2-806 requiring utilities with greater than \$1 million in
16 jurisdictional revenues to obtain prior approval for a transfer of control transaction.

17 5. A.R.S. § 40-285 requires public service corporations to obtain Commission
18 authorization to encumber certain utility assets. The statute serves to protect captive customers
19 from a utility's act to dispose of any of its assets that are necessary for the provision of service;
20 thus, it serves to preempt any service impairment due to disposal of assets essential for providing
21 service.

22 6. A pledge of the Applicants' Arizona's assets should not impair the availability of
23 service to customers since the Applicants provide competitive services that are available from
24 alternative service providers. Customers may still have exposure to losses to the extent they have
25 prepaid for service or made deposits, therefore, any authorization for encumbrance should provide
26 customer protection for prepayments and deposits.

27 7. On May 10, 2010, AGLN provided Staff with an advance copy of its public notice
28 of financing application. The Company intends to publish a notice of its financing application in
the Arizona Republic on May 14, 2010.

¹ Approximately July 1, 2010.

8. The Applicants were found to be in good standing and in compliance by the Consumer Service and Compliance Sections of the Commission.

9. Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Company, would not impair its ability to attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and adequate service. Staff, therefore, recommends that the Commission authorize AGLN's request to encumber its Arizona assets as described in its application.

10. Staff concludes that a pledge of the Applicants' assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from alternative service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits, therefore, Staff recommends approval of the application subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by the Applicants.

11. Staff further recommends that AGLN notify the Commission through a filing in Docket Control within 30 days of the completion of the AGLN-Zayo Transaction.

12. Staff further recommends that AGLN file with Docket Control, as a compliance item in this matter, copies of the loan documents, to the Commission Utilities Staff, within 60 days of the execution of any financing transaction authorized herein.

CONCLUSIONS OF LAW

1. AGL Networks, LLC is a public service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-285.

2. The Commission has jurisdiction over AGL Networks, LLC and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated May 11, 2010, concludes that it is in the public interest to grant approval for AGL Networks, LLC to encumber assets as proposed in financing arrangement discussed herein.

• • •

• • •

ORDER

IT IS THEREFORE ORDERED that the application of AGL Networks, LLC requesting approval to encumber assets as described in Findings of Fact Nos. 3a, 3b, and 3c, as discussed herein, be and hereby is approved.

IT IS FURTHER ORDERED that AGL Networks, LLC is authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

IT IS FURTHER ORDERED that the application of AGL Networks, LLC is subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by AGL Networks, LLC.

IT IS FURTHER ORDERED that copies of executed security documents be filed with the Compliance Section within 60 days of the decision in this matter.

IT IS FURTHER ORDERED that the authorization granted is contingent on AGL Networks, LLC and its parent, AGL Investments, LLC completing a transaction with Zayo Group, LLC whereby Zayo Group, LLC will acquire all of AGL Investments, LLC's membership interests in AGL Networks, LLC.

...

...

...

...

...

...

...

...

...

...

...

...

...

1 IT IS FURTHER ORDERED that AGL Networks, LLC shall notify the Commission by
2 filing a notice in this docket within 30 days of the AGL Networks, LLC acquisition by Zayo
3 Group, LLC or within 30 days of a failure to complete the AGL Networks, LLC acquisition by
4 Zayo Group, LLC.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6
7 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**
8

9
10 CHAIRMAN

COMMISSIONER

11
12 COMMISSIONER

COMMISSIONER

COMMISSIONER

13
14 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
15 Executive Director of the Arizona Corporation Commission,
16 have hereunto, set my hand and caused the official seal of
17 this Commission to be affixed at the Capitol, in the City of
18 Phoenix, this _____ day of _____, 2010.

19
20 _____
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

21 DISSENT: _____

22
23 DISSENT: _____

24 SMO:AFF:lhmvAV
25
26
27
28

1 SERVICE LIST FOR: AGL Networks, LLC
2 DOCKET NO. T-20667A-10-0126

3 Ms. Jean L. Kiddoo
4 Mr. Brett P. Ferenchak
Bingham McCutchen LLP
5 2020 K Street, N.W.
Washington, DC 20006

6
7 Mr. Scott E. Beer
General Counsel
8 Zayo Group, LLC
901 Front Street, Suite 200
9 Louisville, Colorado 80027

10 Mr. Thomas H. Campbell
11 Mr. Michael T. Hallam
Lewis & Roca LLP
12 40 North Central Avenue
Phoenix, Arizona 85004

13
14 Mr. Steven M. Olea
Director, Utilities Division
15 Arizona Corporation Commission
1200 West Washington Street
16 Phoenix, Arizona 85007

17 Ms. Janice M. Alward
Chief Counsel, Legal Division
18 Arizona Corporation Commission
1200 West Washington Street
19 Phoenix, Arizona 85007
20
21
22
23
24
25
26
27
28